No. 89-295

In The

Supreme Court of the United States

October Term, 1989

CATHY YVONNE STONE,

Petitioner,

vs.

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., ABERBACH ENTERPRISES, LTD., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

PARTIES TO THE PROCEEDINGS

Although the parties to the proceedings are set forth in the caption hereof, in accordance with Supreme Court Rule 28.1, the parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of the corporate Respondents are listed herein.

Subsequent to the filing of this action, Respondent Acuff-Rose-Opryland Music, Inc. changed its name to Acuff-Rose Music, Inc. and Respondent Milene-Opryland Music, Inc. changed its name to Milene Music, Inc. The current Acuff-Rose Music, Inc. and Milene Music, Inc. are wholly-owned subsidiaries of Opryland Music Group, Inc. Opryland Music Group, Inc. is a wholly-owned subsidiary of Opryland USA Inc. Opryland USA Inc. is a wholly-owned subsidiary of Gaylord Broadcasting Company. Gaylord Broadcasting Company is a wholly-owned subsidiary of Oklahoma Publishing Company, a Delaware corporation. There are no subsidiaries of Respondents Acuff-Rose-Opryland Music, Inc. (now Acuff-Rose Music, Inc.) and Milene-Opryland Music, Inc. (now Milene Music, Inc.). Oklahoma Publishing Company and its wholly-owned subsidiaries have numerous, wholly-owned subsidiaries which could be classified as affiliates of Respondents Acuff-Rose-Opryland Music, Inc. (now Acuff-Rose Music, Inc.) and Milene-Opryland Music, Inc. (now Milene Music, Inc.). However, as corporations either wholly-owned by Oklahoma Publishing Company or its wholly-owned subsidiaries, none of such affiliates could constitute a conflict of ownership interest for the Court and are not included herein.

I.

PARTIES TO THE PROCEEDINGS (Cont.)

Respondents Fred Rose Music, Inc. and Milene Music, Inc. have been dissolved and their assets distributed to Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc.

Respondent Aberbach Enterprises, Ltd. has no parent or subsidiary corporations, nor does it have any affiliates.

Respondent Chappell & Co., Inc. has changed its name to Warner/Chappell Music, Inc. Warner/Chappell Music, Inc. is a wholly-owned subsidiary of Warner Communications, Inc. ("WCI") which is a diversified entertainment and communications company. WCI has numerous wholly-owned subsidiaries and wholly-owned subsidiaries of those subsidiaries which could be classified as affiliates of Respondent Warner/Chappell Music, Inc. As corporations either wholly-owned by WCI or its wholly-owned subsidiaries, none of such affiliates could constitute a conflict of ownership interest for the Court and are not included herein. Three (3) subsidiaries of WCI or its wholly-owned subsidiaries are not wholly-owned and are listed below:

Warner Italia, S.P.A. (an Italian corporation)

Warner Pioneer Corporation (a Japanese corporation)

Warner Cable Communications of Cincinnati, Inc. (an Ohio corporation).

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IV.

STATEMENT OF THE CASE

A. STATEMENT OF MATERIAL FACTS

On September 12, 1985, Petitioner commenced this action for declaratory judgment and ancillary relief with respect to her alleged entitlement to an interest in the renewal term of copyright in musical compositions written by Hiriam "Hank" Williams. Petitioner bases her entitlement upon her alleged status as the illegitimate daughter of Hiriam "Hank" Williams who died on January 1, 1953, five days before Petitioner's birth. This action was commenced more than seventeen (17) years after judicial proceedings in 1967, in which Petitioner was represented by a court appointed guardian ad litem who addressed such status and attendant rights, and more than eleven (11) years after Petitioner was advised by her adoptive mother in 1974 that she was or could be the biological child of Hiriam "Hank" Williams. (A5).[1]

Hiriam "Hank" Williams ("Williams, Sr.") was a renowned country music artist and prolific songwriter, authoring more than one hundred (100) musical compositions (the "Works") prior to his death. Pursuant to an exclusive songwriting agreement, Williams, Sr. assigned the Works and the copyrights therein to Acuff-Rose Publications, the predecessor to Respondents Acuff-Rose-Opryland Music, Inc. (now Acuff-Rose Music, Inc.), Milene-Opryland Music, Inc. (now Milene Music, Inc.), Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and

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[1] All references are to pages of the Appendix to Petitioner's Petition for Writ of Certiorari.

Milene Music, Inc. (the "Acuff-Rose Respondents"), which published the vast majority of the Works and owned the original term of copyright therein. (B4). In 1963, the Acuff-Rose Respondents acquired the interest of Williams, Sr.'s then minor child, Respondent Randall Hank Williams, Jr. ("Williams, Jr."), in the renewal term rights in the Works. Billie Jean Williams Berlin ("Berlin") is the widow of Williams, Sr. On May 28, 1969, Respondent Aberbach Enterprises, Ltd. acquired Berlin's interest in the renewal term rights in the Works which she possessed as the widow of Williams, Sr. (B 3-4). The Berlin renewal term rights in the Works are administered on behalf of Respondent Aberbach by Respondent Chappell Music Company (now Warner/Chappell Music, Inc.).

From and after 1971, as the original term of copyright expired on each of the Works, the renewal term of copyright in such Works was duly obtained by or on behalf of the Acuff-Rose Respondents and/or Respondent Aberbach, as the assignees of the Williams, Jr. and Berlin renewal term rights in the Works. The Acuff-Rose Respondents and Respondent Aberbach have exercised dominion and control over the renewal term copyrights in the Works since such rights were secured. (A13).

Petitioner was born on January 6, 1953 in Montgomery, Alabama to Bobbie W. Jett, an unmarried woman.[2] (A4). From her birth Petitioner lived with Mrs. Lillian Stone, Williams, Sr.'s mother, and was adopted by Mrs.

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[2] Respondents assumed *arguendo* that Williams, Sr. was Petitioner's biological father for the purpose of their Motion for Summary Judgment, the District Court's granting of which forms the basis for Petitioner's appeal in this action. (B8).

Stone and her husband in December, 1954. Following Mrs. Stone's death in 1955, Petitioner was adopted by George Wayne Deupree and Mary Louise Sims Deupree of Mobile, Alabama, through the Alabama Department of Pensions and Security ("Alabama P&S"). (A4).

In 1967, Audrey Mae Williams (Williams, Sr.'s ex-wife and Williams, Jr.'s mother) and Williams, Jr. petitioned the Circuit Court of Montgomery County, Alabama requesting, *inter alia*, that the Court's order approving the sale of Williams, Jr.'s renewal term rights in the Works be vacated, and that the Estate of Williams, Sr. be closed (the "1967-68 proceedings"). In response to these petitions, Petitioner's existence was formally suggested to the court and the question of any legal rights on her part as a possible heir of Williams, Sr. with respect to Williams, Sr.'s estate and the renewal term of copyright in the Works was raised by Williams, Jr.'s Alabama guardian, who also served as the administratrix of the Estate of Williams, Sr. The Circuit Court appointed a guardian ad litem to represent the interests of Petitioner and any other minor person or persons who might have an interest in the Estate of Williams, Sr. or the renewal copyrights claimed by Williams, Jr. After investigation, the guardian ad litem reported to the Court that Petitioner was the only such minor person who could be identified. (A5, B11).

Through the auspices of Alabama P&S, the guardian ad litem contacted the Deuprees and advised them of the 1967-68 proceedings. After discussing the 1967-68 proceedings with the guardian ad litem, Mrs. Deupree told him that they were not interested in pursuing any claim on behalf of Petitioner arising out of her possible

relationship with Williams, Sr. Despite the Deuprees' request to the contrary, the guardian ad litem vigorously pursued Petitioner's claims. (A5, B12).

After lengthy evidentiary proceedings, the Circuit Court issued orders finding and concluding that (1) Petitioner had no right of inheritance from Williams, Sr. under copyright law, (2) Petitioner was not an heir of Williams, Sr. and (3) Williams, Jr. was the sole heir of Williams, Sr. (A5, B13).

In conjunction with Petitioner's twenty-first birthday in January, 1974, Mrs. Deupree told Petitioner that Williams, Sr. was or could be her biological father. Mrs. Deupree also advised Petitioner that she was to pick up certain funds from the Circuit Court of Montgomery County, Alabama representing her homestead interest in the Estate of Williams, Sr.'s mother, Mrs. Lillian Stone. Following these disclosures, Petitioner began to seek information relative to Williams, Sr. Among other things, Petitioner read a book on the life of Williams, Sr. by Roger Williams entitled *Sing A Sad Song* (the "Williams Book"). The Williams Book includes references to the 1967-68 proceedings, which identify persons involved therein, and makes reference to an illegitimate child, allegedly fathered by Williams, Sr., who had been adopted, as well as the possible rights of such child to an interest in the renewal term of copyright in the Works. At that time, Petitioner surmised that she might be that child. (A5-6, B13-15).

In 1976, Petitioner met Nicholas Braswell, an attorney in Montgomery, Alabama. Petitioner told Mr. Braswell that she was the daughter of Williams, Sr. Although Mr.

Braswell contacted the judge who presided over the 1967-68 proceedings on her behalf and gave Petitioner sufficient information to contact him, she did not attempt to do so until 1984. (A6, B15-16).

In 1979, Petitioner contacted Alabama P&S to obtain information relative to her biological mother. Petitioner told Mrs. Emogene Austin of Alabama P&S (1) what she had been told by Mrs. Deupree of her relationship to Williams, Sr., (2) that she knew of her identity, (3) that she had read newspaper clippings about Williams, Sr. and knew that there had been mention of her in the papers at the time of the 1967-68 proceedings and, significantly, (4) that she did not want anyone to ever link her with Williams, Sr. Approximately a year later, in December, 1980, George Wayne Deupree, Petitioner's adoptive father, told Petitioner the names of persons who had participated in her adoption and the 1967-68 proceedings and sent her a legal document and newspaper clippings relative to the 1967-68 proceedings. (A6, B17).

Since they acquired their respective interests therein, Respondents have dealt with and exercised dominion over the copyrights in the Works, both original and renewal term, as the owners of all of the rights therein. Respondents issued licenses and entered into contracts with respect thereto; received, disclosed and utilized income from the exploitation of such copyrights and included the income therefrom on their federal income tax returns as provided by law; expended sums to exploit the copyright in the Works during the renewal term and otherwise have dealt with such rights as the sole owners and beneficiaries thereof and changed their positions in

reliance thereon. (A13, B21-23). In May, 1985, Respondents Rose and Acuff, as trustees in liquidation, sold their interest in the renewal term of copyright in the Works to Respondents Acuff-Rose-Opryland and Milene-Opryland, making substantial warranties and representations relative to their ownership of the Williams, Jr. rights in the renewal term of copyright in the Works and rendered themselves possibly liable under indemnification in the event of a breach of such representations and warranties. (B22). All of these actions were taken in reliance on the absence of any challenge by Petitioner to their rights in the Works or the assertion by her of any claim to an interest in any of the rights in the Works.

B. COURSE OF PROCEEDINGS

1. FEDERAL PROCEEDINGS

Petitioner filed this action with the United States District Court for the Southern District of New York on September 12, 1985. The operative pleading in this action is the Third Amended Complaint which was filed on or about September 26, 1986, by which time exhaustive discovery had been undertaken. The Third Amended Complaint was divided into two (2) claims for relief. The first claim for relief, alleged against all Respondents, sought a declaratory judgment that Petitioner is the natural daughter of Williams, Sr. and the owner of not less than an undivided one-third (1/3) interest in the renewal term rights in the Works and an appropriate interest in foreign exploitation of the Works. Petitioner also sought nullification of an order of the Alabama Circuit Court in the

1967-68 proceedings, an accounting, damages and the imposition of a constructive or resulting trust with respect to the income from the exploitation of the renewal term rights in the Works. Petitioner's second claim for relief alleged a conspiracy to defraud Petitioner and a breach of fiduciary duty against the Acuff-Rose Respondents only, and sought damages and exemplary damages against the Acuff-Rose Respondents according to proof at trial. Respondent Williams, Jr. and the Aberbach Respondents were not named as parties to the second claim for relief. Petitioner also sought reasonable attorney's fees and the costs of suit. (A7, B6-7).

On March 16, 1987, after the Third Amended Complaint had been answered and discovery completed, the Respondents submitted a joint Motion for Summary Judgment asserting, *inter alia*, that Petitioner's claims were barred by the copyright statute of limitations, laches, equitable estoppel, waiver, res judicata and collateral estoppel, and that Petitioner failed to state a cause of action because she did not have the status of a child of Williams, Sr. under the Copyright Acts of 1909 and 1976 and applicable Alabama law. For purposes of such Motion only, it was assumed *arguendo* that Petitioner was the biological child of Williams, Sr. On March 19, 1987, Petitioner moved for partial summary judgment on her claim that she is Williams, Sr.'s natural daughter and that she is entitled to an undivided one-third (1/3) interest in all renewal rights in the Works. On March 20, 1987, Respondents Berlin, Chappell and Aberbach moved for summary judgment and dismissal of the claims against them on the ground that even if Petitioner were to prevail on her first cause of action, Berlin is nevertheless entitled

under copyright law to a one-half (1/2) interest in the Works as the widow of Williams, Sr. and Williams, Sr.'s children would only be entitled jointly to a one-half (1/2) interest therein. Thus, the rights of the Aberbach Respondents in the Works would not be affected by Petitioner's Complaint. (B6-7).

The District Court granted the Respondents' joint Motion for Summary Judgment and dismissed the Third Amended Complaint in its entirety based upon the doctrine of laches, holding that Petitioner had unreasonably delayed in asserting her claims and that Respondents had been materially prejudiced thereby. (A8, B7). The District Court did not reach or address the other grounds asserted by the Respondents in their joint Motion for Summary Judgment or the questions raised in either Petitioner's partial summary judgment motion or in the summary judgment motion submitted by Respondents Berlin, Chappell and Aberbach. (B7).

Petitioner perfected an appeal of the District Court's decision to the United States Court of Appeals for the Second Circuit. Pursuant to an Opinion dated April 21, 1989, the Second Circuit affirmed the judgment of the District Court that Petitioner's delay in filing suit until September 1985 was unexcused and had prejudiced Respondents. (A14).

Petitioner submitted a Petition for Rehearing to the Second Circuit dated May 4, 1989, which was denied by an Order dated May 23, 1989. Petitioner subsequently filed a Motion for Recall of Mandate and Order Granting Leave to File Petition for Rehearing and Rehearing in Banc dated July 31, 1989. The Motion for Recall was

granted on August 24, 1989. Petitioner submitted a Petition for Rehearing and Suggestion for Rehearing In Banc, dated September 6, 1989. Briefs in opposition to such petition were filed by all Respondents. Such Petition is currently pending before the Second Circuit.

2. ALABAMA STATE COURT PROCEEDINGS

In her Petition for Writ of Certiorari Petitioner has alternately asserted that the decision of the Second Circuit conflicts with or will cause confusion regarding an opinion of the Supreme Court of Alabama in the case of *Stone vs. Gulf American Fire and Casualty Co.*, et al., Case No. 87-269, dated July 5, 1989 (the "Alabama Opinion"). Although the Alabama Opinion, which concerns the Williams, Sr. estate, is irrelevant to this action regarding an entitlement to an interest in renewal copyrights since such rights did not flow through the Estate of Williams, Sr.[3], analysis of such allegation will be aided by a succinct statement of the Alabama Court proceedings.

The Alabama Opinion arose from an action before the Circuit Court of Montgomery County, Alabama instituted by Hank Williams, Jr., Roy Acuff and Wesley Rose against

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[3] Renewal copyrights under both the Copyright Acts of 1909 and 1976 could never be an asset of a deceased author's estate if a widow or children survive into the renewal period, i.e. the statutory period during which a copyright could be renewed. *Frederick Music Co. v. Sickler,* 708 F.Supp. 587 (S.D.N.Y. 1989). Since both Williams, Jr. and Berlin are still living, the renewal copyrights of Williams, Sr. never became an asset of the Estate of Williams, Sr. or subject to the jurisdiction of the Alabama courts.

Petitioner regarding her alleged entitlement to share in the assets and proceeds of the Estate of Williams, Sr. (A7). Petitioner counterclaimed against Williams, Jr. for a determination of her status as a child of Williams, Sr. and filed a third party indemnity action against Irene Smith and Robert B. Stewart, as the administrators of the Williams, Sr. estate, Stewart and his law firm, as the attorneys for the estate, and the insurance company which issued the administrators' bonds. (C4). Williams, Jr., Acuff and Rose moved for summary judgment on the initial action and Petitioner's counterclaim on the grounds of certain Alabama statutes, res judicata, collateral estoppel, laches, equitable estoppel and waiver. The third party defendants also moved for summary judgment on the third party indemnity action. The trial court granted all motions for summary judgment "on all points", but held that, although not entitled to share in the estate, Petitioner was the illegitimate daughter of Williams, Sr.

Petitioner did not appeal the granting of summary judgment on the initial action or her counterclaim, the only actions to which any Respondents herein were parties, and such judgments became final.

Petitioner elected to appeal only the granting of summary judgment on her third party indemnity action against Stewart's law firm, Smith and the bonding company, none of whom are parties to this action. It is the appeal from the summary judgment on the third party indemnity action, in which none of the Respondents were involved, that gave rise to the Alabama Opinion.[4] (C6).

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[4] The Alabama Supreme Court issued the Alabama Opinion on July 5, 1989. Within the time required by Alabama law,

(Continued on following page)

Neither the Aberbach Respondents nor the Acuff-Rose Respondents (except Acuff and Rose in their capacity as trustees) were parties to or are bound by any decisions in the Alabama action.

V.

SUMMARY OF ARGUMENT

Petitioner has alleged that the decision of the Court of Appeals conflicts with prior decisions of this Court, as well as the decision of a state court of last resort on a federal question and that the decisions of the District Court and the Court of Appeals have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. None of the allegations of Petitioner constitute sufficiently special and important reasons to warrant the review of this Court and the granting of Petitioner's Petition for Writ of Certiorari.

(Continued from previous page)

three of the parties to that appeal, including Petitioner, submitted Applications for Rehearing and/or Motions to Extend and Clarify the Alabama Opinion. In addition, Williams, Jr., although not a party to such appeal, has submitted a Petition for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and for Stay of Issuance of Certificate of Judgment Pending Further Proceedings. The Supreme Court of Alabama has not acted upon the respective submissions and has not issued a Certificate of Judgment with respect to the *Gulf American* case. Thus, the opinion of July 5, 1989 is not a final decision of the Alabama Supreme Court.

Petitioner alleges as her first reason for granting review that the decision of the Court of Appeals affirming a bar of Petitioner's claim on the ground of laches conflicts with decisions of this Court by engaging in improper judicial legislation. None of Petitioner's referenced decisions deals with the application of the federal rule of laches. To sustain this ground would be tantamount to prohibiting the bar of any statutory right on the time-honored ground of laches, the reverse of which has been previously recognized by this Court.

As her second reason for granting review, Petitioner has alleged that the decision of the Court of Appeals conflicts with a prior decision of this Court regarding limitation of the bar of laches so as not to bar any prospective relief and that such decision conflicts with or causes confusion with respect to a decision of the Supreme Court of Alabama. There is no conflict with the prior decision of this Court since such decision is readily distinguishable from the present action in that it addressed an on-going infringement of the plaintiff's rights whereas this action is concerned with a declaration of entitlement to such rights. The Court of Appeals decision could only conflict with or cause confusion regarding the portions of the opinion of the Supreme Court of Alabama that addressed renewal copyrights. Those portions of the Alabama Opinion are, at best, dicta and wholly gratuitous, since under the Second Amended Complaint in the Alabama action, which was the operative pleading therein and which was mistakenly not referenced in the Alabama Opinion, renewal copyrights were not a part of the subject matter of the action; such renewals did not flow through the Estate of Williams, Sr.,

and are, thus, outside of the jurisdiction of the Alabama Supreme Court. In addition, the referenced opinion of the Supreme Court of Alabama is not a final decision of such Court. *See*, notes 3 and 4, *supra*.

Lastly, Petitioner alleges that the decisions of the District Court and the Court of Appeals have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Petitioner has accepted the detailed statement of facts found by the District Court after review of voluminous documentation submitted by the parties with respect to the three (3) motions for summary judgment which were before it. There is, therefore, no genuine issue as to any material fact. The District Court and the Court of Appeals applied those undisputed facts to the governing federal law of laches consistent with prior decisions of this Court in accordance with the accepted and usual course of judicial proceedings.

There are no special and important reasons for review of this matter on writ of certiorari and the petition should be denied.

VI.

ARGUMENT

A. THE COURT OF APPEALS DECISION DOES NOT CONSTITUTE JUDICIAL LEGISLATION OR CONFLICT WITH PRIOR DECISIONS OF THE SUPREME COURT

The Court of Appeals correctly applied the time-honored doctrine of laches to the facts of the instant case

when it affirmed the District Court's dismissal of Petitioner's Third Amended Complaint. Petitioner asserts as her first reason for granting her Petition for Writ of Certiorari that application of laches to this statutory action constitutes impermissible judicial legislation and destroys the certainty and uniformity of the Copyright Act intended by Congress. If Petitioner's argument is adopted, laches would not be applicable to any cause of action based upon a federal statute. Such is certainly not the case.

The reported decisions are replete with circumstances where laches was applied to statutory actions. *Potash Co of America v. International Mineral & Chemical Corp.*, 213 F.2d 153 (10th Cir. 1954); *Lingenfelter v. Keystone Consol. Industries, Inc.*, 691 F.2d 339 (7th Cir. 1982). Laches has been specifically recognized as a defense to copyright actions. *Lottie Joplin Thomas Trust v. Crown Publishers, Inc.*, 592 F.2d 651 (2d Cir. 1978); *New Era Publications International, ApS. v. Henry Holt & Co.*, 873 F.2d 576 (2d Cir. 1989). Indeed, the Supreme Court recognized the applicability of laches to statutory actions in *Holmberg v. Ambrecht*, 327 U.S. 392, 396, 66 S. Ct. 582, 584, 90 L.Ed. 743, 747 (1946), which is cited by Petitioner and the Second Circuit. (A9). Application of the federal doctrine of laches does not create uncertainty or a lack of uniformity, but, just as Justice Douglas stated in his concurring opinion in *Burnett v. New York Central R.R. Co.*, 380 U.S. 424, 437, 85 S. Ct. 1050, 13 L. Ed. 2d 941, 950 (1965), "(t)he long-established federal rule of laches, ..., is uncomplicated, uniform and directly responsive to the problem."

Regardless of the recognition of the applicability of laches to federal question actions, this cause does not merit the consideration of this Court. The first ground cited by Petitioner fails to meet the standard of the "special and important reasons" for granting a writ of certiorari required by Supreme Court Rule 17.1. "Special and important reasons" imply a reach to a problem beyond the academic or episodic. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74, 15 S. Ct. 614, 99 L.Ed. 897, 901 (1955). Although this action is based upon factual circumstances which are more challenging than most fictional scenarios created by law school professors to pique the academic interest of their students, given the application of laches to federal question actions generally, it does not pose a problem beyond the academic or episodic.

Petitioner also asserts a conflict with this Court's decision in *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373, 80 S.Ct. 792, 4 L.Ed.2d 804 (1960). There is no such conflict. The *Miller Music* case dealt with an interpretation of the renewal rights clause of the copyright act as it applies to executors of a deceased author's estate. No question of laches arose in that action. The mere fact that rights are derived from a statute does not prevent the application of the federal rule of laches. *See, Holmberg v. Ambrecht, supra.*

Petitioner's first asserted reason for granting a writ of certiorari is insufficient to merit this court's consideration and her petition should be denied.

B. THE COURT OF APPEALS APPLICATION OF THE FEDERAL RULE OF LACHES DOES NOT CONFLICT WITH DECISIONS OF THE SUPREME COURT OR PRODUCE CONFUSION WITH THE OPINION OF THE ALABAMA SUPREME COURT IN *STONE V. GULF AMERICAN CASUALTY*

As a second reason for granting her Petition for Writ of Certiorari Petitioner asserts that the decision of the Second Circuit conflicts with prior decisions of this Court and with a decision of the court of last resort of a state. The cases cited by Petitioner are clearly distinguishable from the instant action and no conflict exists between the decision of the Court of Appeals and prior decisions of this Court, or with the opinion of the Alabama Supreme Court, even if it was a final decision.

The case of *Menendez v. Holt*, 128 U.S. 514, 9 S.Ct. 143, 32 L.Ed. 526 (1888), cited by Petitioner and the copyright cases referenced in support thereof all arose out of actions for copyright and trademark infringement. In each of those cases there was a continuing infringement of the respective plaintiff's rights in trademarks and copyrights which such courts did not feel justified the denial of prospective relief despite the laches of the particular plaintiffs. This cause is not an infringement action relative to an individual trademark or copyright, but is a declaratory judgment action seeking to perfect a claim to an entitlement to an interest in the renewal term of copyright in the works of a deceased author. Unlike the plaintiffs in *Menendez* and the other cases cited by Petitioner, Petitioner did not seek redress for a continuing infringement of her copyright, but sought to establish a claim to an interest in copyrights after a period of delay which

both the District Court and the Court of Appeals found to be unreasonable and prejudicial to Respondents.

This Court has long recognized that prospective relief may be barred by laches under proper circumstances, even in infringement actions. *French Republic v. Saratoga Vichy Spring Co.*, 191 U.S. 427, 24 S.Ct. 145, 48 L.Ed. 247 (1903). This position was also expressed in *Menendez* itself. *Menendez*, 128 U.S. at 524. Although not specifically addressing this issue, the District Court and the Court of Appeals found that the undisputed facts and circumstances of this action warranted a total dismissal of Petitioner's claim. It is totally proper for a court to deny a plaintiff's *claims*, when a plaintiff has slept on his *rights*. *Burnett*, 380 U.S. at 428 (emphasis added).

In the questions presented and the argument portions of her petition Petitioner alternately asserts that the decision of the Court of Appeals conflicts or causes confusion with the opinion of the Alabama Supreme Court in *Stone v. Gulf American Casualty*, even though Petitioner recognizes in her Petition that the July 5, 1989 opinion is not final. *See, Petition for Writ of Certiorari*, p. 47. Any presumed conflict or confusion with the Alabama Opinion is not caused by the decision of the Second Circuit, but by the attempted rulings of the Alabama Supreme Court on matters outside of the scope of the issues before it on appeal. The Alabama Opinion states that Petitioner is entitled to an interest in the renewal term of copyright in the Works. (C100-101). Such rights are precisely what Petitioner is seeking in this action.

Not only has the Alabama Supreme Court spoken on issues not presented to it by the pleadings in that action,

but, had such issues come before it, it would have lacked subject matter jurisdiction to decide such issues. As Petitioner has recognized in her Third Amended Complaint and numerous other documents in this action, when a determination of copyright rights requires interpretation of the copyright statutes, as in the instant case, it is within the exclusive jurisdiction of the federal courts and any attempted disposition or determination thereof by a court of the states is outside of that court's jurisdiction and of no consequence or affect. 28 U.S.C. Sec. 1338(a). *See also, T.B. Harms Co. v. Eliscu,* 339 F.2d 823 (2d Cir. 1964). As any final decision of the Alabama Supreme Court with respect to the renewal term of copyright in the Works is outside of that court's jurisdiction, the finding of the Court of Appeals cannot be said to conflict with a valid decision of such court or cause confusion with respect to the subject matter of this action. Additionally, as noted above, the interest in the renewal term of copyright in the Works did not and could not become part of the Williams, Sr. estate over which the Alabama Supreme Court purportedly asserted jurisdiction in the Alabama Opinion.[5]

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[5] The Alabama Opinion arises out of an appeal of a third party indemnity action against parties with no interest in the renewal term of copyright in the Works. The action to which any of the Respondents was a party was decided in their favor and not appealed by Petitioner. Therefore, there is a substantial question, which has been raised with the Alabama Supreme Court, but not acted upon, as to whether it has jurisdiction to reach any of the questions with respect to the rights of persons who were not parties to the third party indemnity action which was the only action appealed.

C. THE DECISIONS OF THE DISTRICT COURT AND THE COURT OF APPEALS WERE RENDERED IN ACCORDANCE WITH ACCEPTED AND USUAL JUDICIAL STANDARDS AND PROCEDURES

Stripped of its rhetoric, Petitioner asserts as her final reason for granting her Petition for Writ of Certiorari that the decisions of the District Court and the Court of Appeals departed so markedly from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for the exercise of this Court's power of supervision. Supreme Court Rule 17.1(a). Such a position is not supportable by the record nor do the actions of the District Court or the Court of Appeals rise to the level of departure from accepted and usual course of proceedings which this Court has determined to be sufficient grounds for granting review. *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 96 S.Ct. 584, 46 L.Ed.2d 542 (1976); *New York City Transit Authority v. Beazer*, 440 U.S. 568, 570, 99 S.Ct. 1355, 59 L.Ed.2d 587, 593 (1979); *Hagans v. Lavine*, 415 U.S. 528, 533, 94 S.Ct. 1372, 39 L.Ed.2d 577, 585 (1974).

The District Court, whose jurisdiction was invoked by Petitioner herself, giving Petitioner her full due process rights, based its decision to grant Respondents' joint Motion for Summary Judgment upon the arguments of counsel, the pleadings, briefs, affidavits and exhibits submitted to the District Court. Over four hundred (400) pages of briefs were submitted to the District Court by the parties with respect to the various motions for summary judgment considered by it and, of these, almost two hundred fifty (250) pages addressed themselves to Respondents' joint Motion for Summary Judgment. Over one thousand (1,000) pages

of affidavits, documents and extracts from discovery responses and depositions were submitted in support of the motions. From such submissions, the District Court found the admitted and uncontroverted facts which it held supported a determination that Petitioner had unreasonably delayed in filing this action and that such delay materially prejudiced Respondents. (B23-37).

Although Petitioner complains that she was denied a trial in this matter, in her Opening Brief before the Court of Appeals, Petitioner stated that she took no issue with the detailed statement of the facts upon which the District Court based its decision, but merely objected to the application of such facts to applicable law. Petitioner now complains for the first time about the basis for the facts determined by the District Court. The Court of Appeals reviewed those same facts and approximately one hundred twenty-nine (129) pages of briefs and eight hundred (800) pages of Joint Appendix and, in affirming the District Court, concluded that . . . "Even granting to Ms. Stone's situation the fullest stretch of sympathy, her own delay and procrastination in the end bars her suit." (A3-4).

Since Petitioner's acceptance of the detailed statement of facts as found by the District Court satisfies the first criteria for summary judgment that there is no genuine issue as to any material fact, any supervisory review of the decisions of the District Court and the Court of Appeals would be limited to the application of such facts to the federal law of laches.

Respondents submit that the numerous decisions with respect to the applicable federal law of laches cited by the District Court and the Court of Appeals provide

more than adequate support for the reasonableness and propriety of the decision of the District Court in granting Respondents' joint Motion for Summary Judgment and the Court of Appeals affirmation thereof in light of the accepted and usual course of judicial proceedings. *See e.g., Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 1355-57, 89 L.Ed.2d 538 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2510-12, 91 L.Ed.2d 202 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2552-54, 91 L.Ed.2d 265 (1986); *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 288-90, 88 S. Ct. 1575, 20 L.Ed.2d 569 (1968), *aff'g* 361 F.2d 671 (2d Cir. 1966); *Knight v. U.S. Fire Insurance Co.*, 804 F.2d 9, 11-12 (2d Cir. 1986), *cert. denied*, 480 U.S. 932, 107 S. Ct. 1570, 94 L.Ed.2d 762 (1987); *Argus Inc. v. Eastman Kodak Co.*, 801 F.2d 38, 42 (2d Cir. 1986), *cert. denied*, 479 U.S. 1088, 107 S. Ct. 1295, 94 L.Ed.2d 151 (1987); *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 799 F.2d 867, 876 (2d Cir. 1986).

As noted by the Court of Appeals (A8), a ruling on the applicability of laches is overturned only when it can be said to constitute an abuse of discretion. *See, Czaplicki v. The S.S. Hoegh Silvercloud*, 351 U.S. 525, 534, 76 S. Ct. 946, 100 L.Ed 1387 (1956); *Gardner v. Panama R.R. Co.*, 342 U.S. 29, 30, 72 S.Ct. 12, 96 L.Ed. 31 (1951). In an obviously independent review, even construing the record in the light most favorable to Petitioner (A8), the Court of Appeals found no abuse of discretion by the District Court and found that Petitioner had unreasonably delayed in filing this action to the prejudice of Respondents. (A14). Therefore, a review of such decisions by this

Court is not required in the exercise of its supervisory powers.

VII.
CONCLUSION

This Court may only review the decision of the Court of Appeals for the Second Circuit if there are special and important reasons therefor. Despite Petitioner's attempted obfuscation of the material facts underlying the decisions of both the District Court and the Court of Appeals, the decisions heretofore rendered in this case do not conflict with applicable decisions of this Court or a state court of last resort, nor have they departed from the accepted and usual course of judicial proceedings. The questions presented for review by the Petitioner are not special or important to anyone other than the parties to this action in any manner other than natural academic curiosity and speculation. For these reasons, Respondents respectfully request that Petitioner's Petition for Writ of Certiorari be denied.

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